IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5732 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESH VASANTLAL MACHHI

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 5732 of 2004

MR JAYESH A DAVE for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by the order dated 26-12-2003 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. It is submitted by the learned counsel for the petitioner that the petitioner has been branded as bootlegger based on single prohibition case registered with South Prohibition Station on 18-11-2003 and impugned order of detention was passed on 26-12-2003. The argument was mainly concentrated towards the delay caused in deciding the representation and communicating the decision to the detenu. It is submitted that the petitioner has sent a written representation to the State Government on 19-4-2004 and it was received on 21-4-2004. However, said representation was rejected on 23-4-2004 and communicated to the detenu on 29-4-2004 and hence, there is a delay in deciding the representation and communicating the decision of the representation. Original communication letter is ordered to be taken on record. In this connection, learned counsel for the petitioner has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the representation dated 19-4-2004 addressed to the State Government was rejected by the State Government on 23-4-2004 and communicated to the detenu on 29-4-2004. Hence, there is a delay in deciding the representation and communicating the decision to the detenu. However, no satisfactory explanation has been putforward by the State authority for the delay caused in deciding the representation and communicating the decision to the detenu by filing affidavit. Hence, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points.

5. The petition is allowed. The impugned order of detention dated 26-12-2003 passed against the detenu Shailesh Vasantlal Machhi is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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